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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,377	03/16/2001	Matthew M. Graf	PA-5239-RFB	8787

9896 7590 03/26/2003

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P.O. BOX 2269
BLOOMINGTON, IN 47402

EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/810,377

Applicant(s)
Graf et al.

Examiner
James F. Hook

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3752



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 14, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-6, and 10-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 10, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (270) in view of Jansen. The patent to Parker discloses all of the recited structure with the exception of using fluorinated ethylene propylene as the polymeric material. The patent to Jansen discloses that it is known in the art that fluorinated ethylene propylene can be used as sleeves in catheters in place of polyamides and polyolefins. It would have been obvious to one skilled in the art to modify the polymeric material in Parker to be made of any suitable plastic for use with catheters including fluorinated ethylene propylene as suggested by Jansen as such is a known equivalent plastic that is used with catheters.

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (270) in view of Hopkins and Jansen. The patent to Parker discloses all of the recited structure with the exception of stating the size of the tungsten particles used and using FEP for the catheter. The patent to Hopkins discloses the recited use of radiopaque materials such as

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tungsten in a catheter, where it is known that the particles can be as small as 0.9 microns, which suggests they can be any size larger than 0.9 microns also. It would have been obvious to one skilled in the art to modify the tungsten in Parker to be of a size at least as small as 0.9 microns and larger as such are known particle sizes of tungsten used in radiopaque catheters as suggested by Hopkins. The patent to Jansen discloses that it is known in the art that fluorinated ethylene propylene can be used as sleeves in catheters in place of polyamides and polyolefins. It would have been obvious to one skilled in the art to modify the polymeric material in Parker to be made of any suitable plastic for use with catheters including fluorinated ethylene propylene as suggested by Jansen as such is a known equivalent plastic that is used with catheters.

4. Claims 5, 6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (270) in view of Jansen as applied to claims 1, 2, 4, 10, 13, and 16 above, and further in view of Hopkins. The patent to Parker as modified discloses all of the recited structure with the exception of stating the size of the tungsten particles used. The patent to Hopkins discloses the recited use of radiopaque materials such as tungsten in a catheter, where it is known that the particles can be as small as 0.9 microns, which suggests they can be any size larger than 0.9 microns also. It would have been obvious to one skilled in the art to modify the tungsten in Parker as modified to be of a size at least as small as 0.9 microns and larger as such are known particle sizes of tungsten used in radiopaque catheters as suggested by Hopkins.

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Response to Arguments

5. Applicant's arguments filed January 14, 2003 have been fully considered but they are not persuasive. Applicants acknowledge that FEP is known in the art for use as a desirable sheath material and that it has been known to load it with radiopaque material, however, it has been held that unexpected results have been achieved using large amounts of loading radiopaque material have been achieved by applicant. Such is not persuasive when the patent to Coneys clearly discloses that large amounts of radiopaque material including from 70-80% loadings is used in FEP that is also used to connect to another portion of the sheath that is made of FEP too. Therefore, it is considered known in Coneys that one skilled in the art would expect results of mixing large amounts of radiopaque loadings in FEP when used with other FEP layers and that one skilled in the art would expect the results desired. Therefore, such an argument of unexpected results is not persuasive. The patent to Jansen is merely used to disclose that in applications for catheters various plastics can be used to form the body, including that it is known that polyamides and FEP are equivalent materials used for this purpose. It is considered that the teachings of the base reference to Parker shows improvements that eliminate the use of metals but instead loads plastic with various amounts of radiopaque materials at different portions of the wall and that such is superior but does not disclose more than polyamide as a possible plastic used for the wall. Therefore, Jansen merely teaches that it is known in such applications that FEP can be used in place of polyamides for catheters. It is clear from Coneys it was known at the time Parker and Jansen were patented that one could achieve success of loading FEP with large

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amounts of radiopaque materials, and that one would have known that such existed in the art and would not be unexpected results, and therefore supports the combination.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Berg and Saitou disclosing state of the art catheters with radiopaque materials therein.

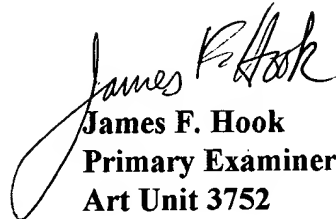
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Hook whose telephone number is (703) 308-2913.

J. Hook
March 24, 2003


James F. Hook
Primary Examiner
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